Drugs in the Workplace: When Employees Get High at Work and Kill Themselves as a Result

An experienced employee who should know better smokes a joint at work. The high messes up his judgment and causes him to commit a reckless safety mistake that costs him his life. Surely, that's not the kind of accident that an employer could ever be held liable for. Right? Wrong. While it does suggest that the victim is to blame, evidence of impairment doesn't automatically get you off the hook under OHS laws. You may still have to prove due diligence, i.e., show that you took all reasonable steps to provide the victim proper safety training and supervision. The following cases illustrate how these cases tend to play out.

The 5 Key Questions
1. Did impairment affect the victim's behaviour? 2. Did employer train victim in dangers of working while impaired? 3. Did employer have clear policies banning workplace drug/alcohol use? 4. Did employer know or have grounds to suspect the victim was impaired? 5. Could employer have taken other reasonably foreseeable safety measures to protect the victim?

CASE 1: EMPLOYER NOT LIABLE

Situation: After a series of unexpected and bizarre safety violations, an experienced, knowledgeable and otherwise trustworthy switchman falls off a rail car and gets run over by its wheels. Blood tests show that he consumed marijuana hours before the start of his shift.

Ruling: The Manitoba provincial court dismisses all charges against the employer.

Reasoning: The court cites 5 factors in finding the employer exercised due diligence:

- The levels of marijuana in the victim's blood were enough to cause impairment and affect his behaviour;
- The victim received proper training in the required safety procedures and dangers of working while impaired;
- The employer implemented clear policies banning workplace drug and alcohol use;
- The employer had no knowledge or reasons to suspect the victim was using pot on duty; and

- The victim didn’t need direct supervision given his training and experience and the safety procedures in place.

R v Canadian National Railway, 2003 CanLII 38653 (MB PC)

CASE 2: EMPLOYER IS LIABLE

Situation: Ignoring the lessons of 15 years of experience, a truck driver stands directly behind the tailgate of the trailer filled with crushed rock that he’s trying to unstick. Suddenly, the materials break loose and bury him in a fatal avalanche. The post-mortem toxicology report detects morphine in his system.

Ruling: The BC Workers’ Compensation Appeals Tribunal fines the employer $14K for failing to provide the victim proper training and supervision.

Reasoning: The Tribunal relied on the same factors as the *CNR* court but this time they led to a different outcome. As in *CNR*, the levels of morphine in the driver’s blood were enough to cause sedation and impair his judgment; in addition, he received proper training in the required safety procedures (in this case, for unloading a truck). BUT unlike the *CNR* case, the employer’s due diligence defence failed because:

- The victim was never trained in the dangers of working while impaired;
- The employer didn’t implement clear workplace anti-drug and alcohol use and testing policies; and
- The victim needed direct supervision given the safety-sensitive nature of trucking and the dangers of letting drivers do their jobs while impaired.

WCAT-2016-00178 (Re), 2016 CanLII 18124 (BC WCAT)

Moral

With recreational marijuana legalization around the corner, bear in mind that making employees aware of your workplace drug and alcohol policies and the importance of working sober is a crucial part of not only safety but also OHS liability risk management. Promoting awareness makes it less likely that employees will come to work high and cause an accident that kills themselves or their co-workers; and if prevention fails, it also provides you a legal defence for accidents that do occur.